

EXHIBIT 2

1 UNCERTIFIED ROUGH DRAFT TRANSCRIPT

2 VIDEO DEPOSITION OF RUSSELL GABRIEL

3 TUESDAY, AUGUST 4, 2020

4 This transcript is a rough draft only, not
5 certified in any way and cannot be used for reading
6 and signing by a witness or filed with any court.
7 All parties receiving this it agree that it will not
8 be shared, given, copied, scanned, faxed, e-mailed,
9 sold or in any way distributed in any form by any
10 party to anyone except their own experts,
11 co-counsel, or staff, and agree to destroy this
12 rough draft in any form and replace it with the
13 final certified transcript, if ordered.

14 There will be discrepancies as to page and
15 line numbers when comparing the rough-draft
16 transcript and the final transcript, and that the
17 rough-draft transcript may contain untranslated
18 steno, incorrect punctuation, an occasional
19 reporter's note, and/or nonsensical English word
20 combinations. All such entries will be corrected on
21 the final transcript. The rough draft transcript
22 will not include title pages, appearance pages,
23 examination or exhibit indexes, or a certificate.
24 Exhibits will not be included. This document has
25 not been proofread.

1 TUESDAY, AUGUST 4, 2020; AUBURN, WASHINGTON

2 THE VIDEOGRAPHER: We are now on the
3 record. Here begins the Zoom videotaped deposition
4 of Gabriel Russell in the matter of Index Newspapers
5 LLC versus City of Portland, in the U.S. District
6 Court, District of Oregon, Portland Division, case
7 number 3:20-cv-01035-SI.

8 Today is August 4th, 2020. The time is
9 11:13. This deposition is being taken over Zoom at
10 the request of BraunHagey & Borden LLP. The
11 videographer is Emily Walter of Magna Legal
12 Services, and the court reporter is Marilyn Hoover
13 of Magna Legal Services.

14 All counsel will be noted on the steno
15 graphic record.

16 Will the court reporter please swear in
17 the witness.

18 THE REPORTER: The attorneys participating
19 in this deposition acknowledge that I am not
20 physically present in the deposition room and that I
21 will be swearing in the witness and reporting this
22 deposition remotely. The parties and their counsel
23 consent to this arrangement and waive any objections
24 to this manner of reporting.

25 Please indicate your agreement by stating

1 facilities across the United States.

2 Q. So what are your sort of duties, more
3 specifically, in your current position, normally?

4 A. I am responsible for overseeing and
5 managing, hiring, evaluation, supervision of all the
6 personnel in Region 10; oversight of contracts,
7 assigning work, evaluating subordinate performance,
8 things of that nature.

9 Q. Anything else that comes to mind?

10 A. (No audible response.)

11 Q. And what are your --

12 (Reporter request.)

13 (Record read.)

14 THE WITNESS: It's a -- It's a management
15 -- it's an executive level position that has a lot
16 of responsibilities.

17 Q. BY MR. ACHARYA: Okay. And what are your
18 duties with respect to these protests?

19 A. With regards to protection of federal
20 facilities, I might not --

21 Q. With regard to -- With regard to the
22 protests in downtown generally, whatever the mission
23 may be there.

24 A. My job is to protect federal facilities
25 from being taken over, from being significantly

1 Q. BY MR. ACHARYA: I believe that's a term
2 that's used within FPS for private contracting
3 forces. Is that -- Am I mistaken?

4 A. We -- We have PSOs that are -- that are in
5 Portland as part of their normal duties. They
6 continued to perform their normal duties. They did
7 not have additional, you know, duties that were
8 related to operation Diligent Valor.

9 Q. Understood. And to be clear: PSOs are
10 privately contracted security officers?

11 A. Yes.

12 Q. What companies in Portland?

13 A. I believe the contract in Portland,
14 Oregon, is by a company named Maxent.

15 Q. M-A-X-E-N-T?

16 A. I'm not sure of the exact spelling.

17 Q. And you command all of the forces sent
18 here as part of Diligent Valor?

19 A. I have tactical control of all of the DHS
20 forces that are -- that are part of operation
21 Diligent Valor.

22 Q. And when you say "tactical control," what
23 do you mean by that?

24 A. That means that I am responsible for just,
25 you know, kind of strategy and tactics for those

1 forces; but I am not responsible for their
2 administrative control, so I don't -- I do not write
3 their evaluations or do discipline for forces that
4 are outside of FPS. I do not, you know, process
5 their paperwork. I'm not responsible for review of
6 their paperwork.

7 Q. So you don't do their discipline?

8 A. Correct.

9 Q. I see. Who does their discipline?

10 A. Each individual component is responsible
11 for their own disciplinary processes.

12 Q. Okay. So you have tactical control over
13 the CBP forces in Diligent Valor?

14 A. Yes.

15 Q. You have tactical control over the ICE
16 forces in Diligent Valor?

17 A. Yes.

18 Q. And you have tactical -- tactical control
19 over the new FPS forces in Diligent Valor?

20 A. Yes.

21 Q. And just to be clear: Do you discipline
22 the new FPS forces in Diligent Valor?

23 MR. GARDNER: Objection, vague. Also
24 objection, lack of foundation.

25 Q. BY MR. ACHARYA: There are new FPS forces

1 Q. BY MR. ACHARYA: Well, yeah, answer the
2 question.

3 You said you have situation -- seen
4 situations where...

5 A. Where deploying additional forces resulted
6 in enhanced protection, which was the goal of the
7 operation.

8 Q. I see. Is Diligent Valor over?

9 A. It is not.

10 Q. So the extra CBP forces are still here?

11 MR. GARDNER: Objection. To the extent
12 that you can answer counsel's question without
13 divulging information that is subject to the law
14 enforcement privilege, you may do so. To the extent
15 you cannot answer his question without divulging
16 such information, I instruct you not to answer.

17 THE WITNESS: I'm not going to answer that
18 question.

19 Q. BY MR. ACHARYA: Are the extra ICE forces
20 still here?

21 MR. GARDNER: Same objection and same
22 instruction.

23 THE WITNESS: Same answer.

24 Q. BY MR. ACHARYA: When will the extra
25 forces leave?

1 presence is not leaving Portland until local police
2 complete cleanup of anarchists and agitators?

3 A. Give me a second to -- That's -- That's a
4 hypothetical and I don't...

5 Q. That's not a hypothetical. That's a
6 question about what -- what Homeland Security is
7 going to do.

8 Are they -- Is DHS's enhanced presence
9 leaving Portland -- is not leaving Portland until
10 local police complete cleanup of anarchists and
11 agitators? Is that true?

12 A. I don't know the answer to that.

13 Q. So you don't know when Homeland Security's
14 enhanced presence will leave?

15 A. That's correct.

16 MS. TONELLI: Objection. Law enforcement
17 privilege. We're -- We're going into -- it's the
18 same idea of when our officers may withdraw.

19 MR. ACHARYA: Yeah, I think this tweet
20 waives that privilege.

21 MS. TONELLI: No, because you're asking
22 for more detail.

23 MR. GARDNER: Yeah, it does not waive any
24 privilege about the details of the law enforcement
25 efforts in Portland.

1 Q. BY MR. ACHARYA: Under what circumstances
2 would FPS have power to enforce an unlawful assembly
3 order on Fourth Street?

4 A. The FPS jurisdiction has authority allows
5 FPS law enforcement officers to taken enforcement
6 action on and around federal property for the
7 protection of federal property and people on it. So
8 if there was for example someone was off a federal
9 property and they were committing assaults against
10 federal officers using projectiles or something of
11 that nature federal officers could taken enforcement
12 action.

13 Q. Understood. But I'm asking about
14 dispersal orders, which are dispersal orders to
15 unlawful assembly; so we're not talking about any
16 actions against federal officers.

17 Does FPS have authority to enforce a
18 dispersal order against an unlawful assembly on
19 Southwest Fourth Street?

20 A. On Southwest Fourth Street?

21 Q. That's one street west of the federal
22 courthouse.

23 A. Generally, no.

24 Q. So you've policed protests, many protests?

25 A. Yes.

1 Q. Sure. Understood.

2 So you're a supervisor. Are you
3 responsible for making sure that people that you
4 tactically command don't use excessive force?

5 A. Yes.

6 Q. Okay. Do you see what -- what federal
7 agents did to the guy wearing the Navy shirt
8 Christopher David?

9 A. Yes.

10 Q. Did you think that was excessive force?

11 A. Counsel, should I answer this.

12 MR. GARDNER: I mean if you can do so
13 without disclosing information that is subject to
14 the law enforcement privilege or other privileges
15 you may if you need to consult we can also do that.

16 THE WITNESS: Can we consult briefly.

17 MR. GARDNER: Absolutely you know what
18 we've been going for a while anyway why don't we
19 take like a five minute break.

20 MR. ACHARYA: Okay so it's 1245 by my
21 clock so we'll be on 1250.

22 MR. GARDNER: Assuming we get through our
23 consultation sure.

24 MR. ACHARYA: Okay thanks.

25 THE VIDEOGRAPHER: Off the record at

1 A. They don't -- I don't believe that they
2 belong to the Department of Homeland Security and
3 we're not operating under my control or supervision.

4 Q. Were they part of the United States
5 marshall service?

6 A. I've been told that I don't know that for
7 sure but I've been told that.

8 Q. Thank you. So as supervisor you're
9 responsible for making sure that people you're
10 supervising conduct themselves according to the
11 rules; is that correct?

12 A. Yes.

13 Q. Have you read the declarations that we
14 submitted in support of the temporary restraining
15 order?

16 A. Yeah, I believe so.

17 Q. Okay. And you imposed and then those
18 declarations all refer to incidents where members of
19 the press were shot or beaten or intimidated.
20 That's your recollection?

21 A. Yes.

22 Q. Okay. And you imposed discipline on the
23 agents involved in every single one of those cases;
24 right?

25 MR. GARDNER: Objection. Mischaracterizes

1 the witness's previous testimony.

2 Q. BY MR. ACHARYA: I'm not characterizing
3 your testimony at all. I'm asking if you imposed
4 discipline on the agents involved in every single
5 one of those cases, in the declarations we submitted
6 in support of the TRO.

7 MR. GARDNER: And his previous testimony
8 -- Please.

9 THE WITNESS: I don't know what agents or
10 officers were involved in uses of force against the
11 declarants or even if they weren't injured by other
12 protesters.

13 Q. BY MR. ACHARYA: Okay. So you -- in fact,
14 you didn't impose discipline on a single agent for
15 the incidents described in those declarations, did
16 you?

17 A. I don't know what officers or agents were
18 involved in the uses of force that you're referring
19 to.

20 Q. Sure. But, so, ultimately, zero agents
21 were disciplined?

22 A. I don't know.

23 MR. GARDNER: Objection. Lack of
24 foundation.

25 Q. BY MR. ACHARYA: Do you know if any agents

1 Do you have information sufficient to know
2 which agents were present at that place, time, and
3 location?

4 MR. GARDNER: I see. I understand the
5 question now.

6 Objection. Mischaracterizes the documents
7 you're referring to. No further objections.

8 Q. BY MR. ACHARYA: Please answer.

9 A. I believe I already answered that, just
10 that I believe it's seven incidents that reported to
11 and we compared those with our -- with our FPS use
12 of force, and we did not find a direct correlation
13 between the complaints and FPS use of force. There
14 may be other agencies involved in the operation that
15 that used a similar type of analysis and discovered
16 a match.

17 Q. BY MR. ACHARYA: So CBP and ICE uses of
18 force, do you have any ability to look at those?

19 A. No. They have their own computer systems.

20 Q. So I'm going to put a declaration into the
21 record here. This is the declaration of Matthew
22 Lewis-Rolland, signed on July 22nd, 2020, docket
23 number 77. Tell me when you have it open.

24 THE REPORTER: Marked next order, counsel?

25 MR. ACHARYA: Sorry. Yeah, next in order.

1 So what was that Exhibit 5?

2 (Exhibit 5 marked.)

3 THE REPORTER: Correct.

4 THE WITNESS: So where I have it, what
5 paragraph are you looking at?

6 Q. BY MR. ACHARYA: Yeah, so I'm looking
7 at -- Well, first off, just have you read this
8 declaration before today?

9 A. I don't believe so.

10 Q. I see. Okay. So if you'd go to page 3,
11 there's a photo of an agent pointing a gun at
12 someone.

13 A. Yes, I see it.

14 Q. Is that agent under your tactical command?

15 A. I don't know that I can --

16 MR. GARDNER: And I would just say:
17 Officer Russell, take the time you need to read the
18 declaration, to the extent it gives you context
19 necessary to answer counsel's question.

20 THE WITNESS: I can't see the picture.

21 There's a patch on officer's shoulder that's
22 depicted there, and it's not clear enough or large
23 enough for me to identify exactly the agency, but it
24 appears likely to be U.S. Marshall's patch.

25 MR. ACHARYA: I see.

1 chat. And so this is declaration of Gabriel
2 Russell -- This is going to be Exhibit 7,
3 declaration of Gabriel Russell, submitted or signed
4 on July 30th, 2020; document number 105-7.

5 (Exhibit 7 marked.)

6 Q. BY MR. ACHARYA: Do you have it open?

7 A. I have a copy here.

8 Q. Okay. Great. And so if you look at
9 paragraph six it says that the DHS office of general
10 counsel provided TRO instructions and discussed them
11 at the roll call; correct?

12 A. Yes. It's not exactly the word it says
13 but it has words to that effect, yes.

14 Q. To that effect and your agents follow
15 those instructions?

16 A. To the best of my knowledge, yes.

17 Q. And if they follow those instructions they
18 won't violate the TRO?

19 A. Generally, yes.

20 Q. And you're in charge of making sure that
21 your agents follow that instruction?

22 A. Yes.

23 Q. That means all Region 10 FPS agents and
24 all.

25 (Reporter request.)

1 Q. BY MR. ACHARYA: Sorry madam court
2 reporter. I said you're in charge of making sure
3 that all Region 10 FPS agents and all agents
4 deployed here for Diligent Valor follow those
5 instructions?

6 A. Yes.

7 Q. And you're aware that we moved for
8 contempt saying that federal agents had violated the
9 TRO?

10 A. Yes.

11 Q. And you would rely on those instructions
12 to figure out if they had in fact violated the TRO?

13 A. To rely on which instructions?

14 Q. The instructions that you discuss in
15 paragraph six?

16 MR. GARDNER: Objection, mischaracterizes
17 the witness's testimony.

18 THE WITNESS: Can you ask that question
19 again.

20 MR. ACHARYA: Sure. So with respect to
21 any allegation that your agents had violated the
22 TRO, you would rely on the policy in paragraph six
23 the instructions in paragraph six to figure out if
24 they had actually violated the TRO; is that correct?

25 MR. GARDNER: Objection.

1 A. Generally.

2 MR. GARDNER: Go ahead.

3 (Reporter request.)

4 THE WITNESS: Generally, yes.

5 Q. BY MR. ACHARYA: And it is your
6 understanding that as long as federal agents don't
7 disperse anyone with a press pass press badge or a
8 shirt that says press they won't violate the TRO?

9 MR. GARDNER: Objection we're now getting
10 into a place where you're calling for information
11 subject to the attorney-client privilege and at this
12 point I would instruct the witness not to answer and
13 as you know this is the subject of motions practice
14 before the court.

15 THE WITNESS: I will not answer.

16 Q. BY MR. ACHARYA: Okay. I'm not asking for
17 what the instructions say I'm asking for your
18 understanding of the TRO.

19 MR. GARDNER: Well, that is not the
20 question you asked. If you want to ask him about
21 what his understanding of the TRO is ask him that
22 question.

23 MR. ACHARYA: Yeah. Let me -- let me say
24 it again.

25 Q. BY MR. ACHARYA: Your understanding of the

1 TRO is that as long as federal agents don't disperse
2 anyone with a press pass press badge or a shirt that
3 says press they won't violate the TRO?

4 A. I would have to go back and read the TRO
5 to see if there were other conditions in there, but.

6 Q. Okay. So did we put so yeah let's go to
7 Exhibit 6, it's tab 13 it's got the 13 in brackets
8 it's the second to last one that I put in the chat
9 if you see it.

10 A. What's it titled.

11 Q. It's titled, brackets, 13, 2020-07-14-44
12 Lewis-Rolland declaration.

13 A. This is the one we looked at previously.

14 Q. It is, yes.

15 A. Yeah. What paragraph do you want to go
16 to?

17 Q. I'm looking at paragraph -- paragraph 13.

18 A. Okay.

19 Q. And, actually, if you would, yeah, if you
20 would read paragraph -- yeah, read paragraph 13 --
21 or, actually, I'll just read it into the record.

22 At 3:10 to 3:11 in the video, around 1:58
23 a.m., I turned so that my right side was facing
24 Agent Doe. At that point, I was shot ten times from
25 Agent Doe's direction. I was hit on my right elbow,

1 the right side of my torso, and my back. The areas
2 where I was shot are all above my waist. At the
3 time I was shot, I was photographing what other
4 officers and protesters were doing. I was not
5 posing any type of threat to Agent Doe or anyone
6 else. I was not even facing him.

7 That's what that paragraph says; correct?

8 A. Correct.

9 Q. Okay. Is it your understanding as a
10 person in charge of TRO compliance that shooting a
11 journalist who's just taking photographs ten times
12 while he has his back turned would that violate the
13 TRO?

14 MR. GARDNER: Objection to the extent it
15 calls for a legal conclusion.

16 THE WITNESS: I'd say that there might be
17 other you know whatever video pictures in a thorough
18 investigation might be you know might reveal
19 information that would lead me to believe that that
20 was not a violation of the TRO, but it is certainly
21 concerning the way it's reported there.

22 Q. BY MR. ACHARYA: Thank you. Do you think
23 it would be acceptable conduct if there weren't a
24 TRO?

25 A. It just depends on -- It depends on what

1 the other facts and circumstances of the case.

2 Q. Of course. But based on the declaration
3 that's in front of you, would that be acceptable
4 conduct just based on those facts, if there were a
5 TRO?

6 A. There.

7 MR. GARDNER: Objection objection asked
8 and answered.

9 MR. ACHARYA: No he answered a different
10 question that I asked the question I asked just
11 based on the facts that are in front of you not
12 taking into context not taking the possibility of
13 other facts would that be acceptable conduct if that
14 weren't a TRO.

15 A. I'd say there are always other facts that
16 declaration is one person's characterizization of a
17 complex and dynamic event there would you know a
18 thorough investigation might reveal contradictory
19 facts other video or pictures that's -- that's the
20 type of investigation that would need to be
21 conducted prior to making that determination.

22 Q. Okay. So you cannot say as you sit here
23 today that shooting a photographer while he's
24 photographing what other officers and protesters are
25 doing while he's not posing any type of threat you

1 can't say that that is unacceptable absent the TRO?

2 MR. GARDNER: Objection. Mischaracterizes
3 the witness's testimony.

4 MR. ACHARYA: Is that true?

5 A. Is what true?

6 Q. Is it true that you cannot say whether the
7 conduct in paragraph 13 would be acceptable or not
8 acceptable without the TRO?

9 A. There are other there may well be other
10 facts that would lead me to conclude that the
11 behavior was acceptable.

12 Q. So you can't say one way or another?

13 A. Correct.

14 Q. So after the TRO was issued did you begin
15 doing anything more to help you identify what agents
16 are at a given location at a given date and time?

17 MR. GARDNER: Objection, vague.

18 MR. ACHARYA: Do you understand the
19 question?

20 A. We did we did. Are you talking
21 specifically just in response to the TRO?

22 Q. BY MR. ACHARYA: Yeah I'm asking you if
23 after the TRO you tried harder to figure out what
24 agents are at places and times?

25 A. After the complaint about violations of

1 the TRO we did we used a procedure that I previously
2 explained where we you know compared use of force
3 reporting with.

4 Q. Yeah. I understand that's?

5 MR. GARDNER: Hey wait counsel you cut the
6 witness off. He was finishing his answer. Please,
7 Officer Russell, you had an answer to finish.
8 Please complete it.

9 A. Yes. I explained previously that when we
10 received complaints about violation of the TRO, that
11 we compared the -- you know, the times and dates and
12 locations inncluded in those complaints with the use
13 of force reporting, to determine if we needed to
14 take investigative or disciplinary action.

15 Q. BY MR. ACHARYA: Right. So I understand
16 that. I am asking sort of not retrospectively, not
17 based on the complaint, but prospectively: Did you
18 do anything to make it easier to figure out in the
19 future who where and when so that you could
20 correlate an incident report with an officer?

21 A. That's kind of a hypothetical. I don't
22 really --

23 Q. No, it's not a hypothetical. I'm asking
24 what you did.

25 Did you do anything to make it easier to

1 figure out who did a thing that gets reported to
2 you?

3 A. We have the same -- We have the same
4 policies and procedures we had.

5 Q. Okay. Thank you. And so you've read the
6 declarations we submitted with the contempt motion?

7 A. I -- Yes.

8 Q. Yes. Did you impose discipline on any of
9 the agents involved in those cases?

10 A. I believe I've already answered this
11 question.

12 Q. I asked with respect to the TRO. This is
13 the contempt.

14 A. We have not -- We -- The specific
15 incidents have not been reported to us in a manner
16 that we've so far that I'm aware of and that's
17 possible but we have a secure portal site where
18 misconduct is reported and it's possible that an
19 allegation of misconduct would have been submitted
20 in that portal site and I would not be made aware of
21 it, but I'm not aware of any disciplines.

22 MR. ACHARYA: Okay. I'm going put another
23 declaration into the chat and it's going to be
24 Exhibit 8.

25 (Exhibit 8 marked.)

1 Q. BY MR. ACHARYA: Tell me when you've got
2 it in front of you. And I'm looking at paragraph 9.

3 A. Okay. I'm looking at it.

4 Q. Have you read this declaration before
5 today?

6 A. I don't believe so.

7 Q. So you haven't watched this video that's
8 in paragraph 9?

9 A. I don't know.

10 Q. So if you look at look at paragraphs 11
11 and 12. Tell me when you've finished reading those
12 I'll read them into the record actually one federal
13 agent walked along the fence watering a line of
14 flowers. Me and three other legal observers were
15 recording. The protesters he maced had not done
16 anything to merit such treatment one may have
17 touched the fence but not in any kind of threatening
18 or violent way this agent stopped before he reached
19 us these events take colon zero six to zero ten
20 above the video then next paragraph then another
21 federal agent walked up with a can of mace, pointed
22 it at roughly head level, and casually pulled the
23 trigger, even though we were pointing to our
24 respective legal observers. We were inundated with
25 mace. When he was done covering us in mace, he

1 stepped back into his formation. These events take
2 place from 0:13 to 0:20 of the above video.

3 That's what that says; is that right?

4 A. Yes.

5 Q. Yes. And you hadn't read that before
6 today?

7 A. No.

8 Q. Were you aware of this allegation of
9 improper use of force before today?

10 A. No.

11 Q. Okay. As a person in charge of TRO
12 compliance, do you think walking up to a group of
13 legal observers wearing ACLU vests and NLG hats,
14 whom a different agent has just been able to avoid
15 spraying, and specifically pepper spraying that
16 group, do you think that would violate the TRO?

17 A. I think --

18 MR. GARDNER: Objection -- Objection,
19 hypothetical. Objection, lack of foundation.
20 Objection, calls for a legal conclusion.

21 Q. BY MR. ACHARYA: It's not a hypothetical.
22 I'm talking about the events in paragraphs 11 and
23 12. Do you think they would violate the TRO?

24 MR. GARDNER: Well, then objection, lack
25 of foundation.

1 Q. BY MR. ACHARYA: Do you know whether they
2 would violate the TRO?

3 MR. GARDNER: Same objection, and also
4 calls for a legal conclusion.

5 Q. BY MR. ACHARYA: Do you understand that
6 the TRO has something to say about paragraphs 11 and
7 12. Do you understand that the TRO is relevant to
8 those paragraphs?

9 MR. GARDNER: Same objection.

10 (Reporter request.)

11 THE WITNESS: Say that again.

12 (Reporter request.)

13 THE WITNESS: Okay. Can we get the last
14 question again.

15 Q. BY MR. ACHARYA: The last question is: Do
16 you understand that the TRO has something to say
17 about paragraphs 11 and 12 that the TRO is relevant
18 to those paragraphs?

19 MR. GARDNER: Same.

20 THE WITNESS: I do.

21 MR. GARDNER: Same objections.

22 THE WITNESS: Okay.

23 Q. BY MR. ACHARYA: Do you understand whether
24 the TRO would permit or prohibit the events in
25 paragraphs 11 and 12?

1 MR. GARDNER: Same objection. Lack of
2 foundation. Calls for a legal conclusion.

3 Q. BY MR. ACHARYA: Okay. You have to
4 answer.

5 A. That would depend on a full and thorough
6 investigation that would reveal all the facts in
7 this case, not just those represented in the
8 declaration.

9 Q. Okay. And you cannot say, sitting here
10 today, whether just those facts on their own would
11 or would not violate the TRO?

12 A. Correct.

13 MR. ACHARYA: I'm going to put a
14 declaration -- or, sorry -- I'm going to put an
15 e-mail into the chat.

16 This is going to be Exhibit 9, I believe.

17 THE REPORTER: Correct.

18 (Exhibit 9 marked.)

19 Q. BY MR. ACHARYA: And tell me when you have
20 it open.

21 A. This is the RD e-mail?

22 Q. Yes.

23 A. Okay. I have it open.

24 Q. So if you see in paragraph 5, I'll read it
25 into the record: "All our officers/agents on the

1 declaration.

2 Q. Okay. By the way, have you seen this
3 e-mail before?

4 A. I don't believe so.

5 Q. It wasn't forwarded to you?

6 A. I don't know. I don't recall. I don't
7 recall seeing this specific e-mail.

8 Q. Okay. Did you instruct your agents on the
9 ground in Portland to exercise maximum caution with
10 respect to legal observers and journalists?

11 A. Yes.

12 Q. Okay. Did you also restrict authority to
13 deploy crowd control devices such as CS gas
14 canisters to an appropriate supervisory level?
15 That's paragraph 9.

16 A. Let me read this whole thing. I don't
17 know who this -- Who is Richard Donohue?

18 Q. He's someone -- you know, I'm honestly not
19 sure.

20 A. This is not someone who's in my chain of
21 command I believe this person works for the
22 Department of Homeland Security. This is not a
23 female that's familiar to me and I haven't watched
24 the entire video but at first glance it does not
25 appear to depict people that work for me.

1 A. Paragraph 8. So the incident command post
2 refers to the federal command post in the emergency
3 operations center refers to, you know, a joint
4 command post that was previously operated by
5 Portland Police Bureau before they kicked the Feds
6 out basically.

7 Q. Understood. So I'm looking at paragraph 8
8 and you said that you personally observed all of the
9 following incidents; is that right?

10 A. Observed on, yeah, video or other, you
11 know, social media.

12 Q. I see. So you didn't observe the actual
13 event take place?

14 A. I was watching -- well, typically watching
15 live video or in some cases it's referring to things
16 that were we saw and claims that were made on
17 Twitter.

18 Q. So did you personally observe the arrest
19 of the man identified as Knudsen?

20 A. I saw video.

21 Q. You saw video of it.

22 Did you -- Yeah, let's go on to 8C on the
23 next page. So this is about an individual on the
24 live stream video who identifies as Ari.

25 A. Yes.

1 Q. Did you personally observe this incident?

2 A. I watched it. I watched the video.

3 Q. You watched the video. So you're familiar
4 with the video?

5 A. I am. I am familiar with the video. I
6 haven't memorized, but I have.

7 Q. Sure. Did you make it?

8 A. Did I make the video?

9 Q. Yeah.

10 A. No.

11 Q. No. You watched it?

12 A. Yes.

13 Q. Okay. Did you watch it before or after
14 July 17th?

15 A. I don't recall.

16 Q. You have no idea when you watched it?

17 A. I believe I watched it July 17th, but I --
18 I actually I don't recall when I watched the video.

19 Q. Okay.

20 A. I believe I watched it the day that it
21 happened is.

22 Q. Okay. And who made this video?

23 A. I don't know. It's just an identified
24 user who's.

25 Q. Are you aware that it's a compilation of

1 videos?

2 MR. GARDNER: Objection. Lack of
3 foundation.

4 MR. ACHARYA: You've seen the video?

5 A. The specific the declaration is referring
6 to a specific time stamp where that behavior occurs,
7 not where that voice is heard, not the other
8 portions of the video.

9 Q. Yeah, it refers to a specific time stamp
10 but it does refer to other portions of the video.
11 It refers to a specific time where she say she has a
12 bunch more press passes, but it refers to earlier
13 portions where she, I guess, is encouraging violent
14 opportunists to tamper with a government owned
15 security barricade, and also a different portion
16 where she's claiming to be a member of the media
17 organization (indiscernible) and GIA.

18 So you've watched -- Have you watched the
19 entire video?

20 A. I believe so.

21 Q. Okay. And are you aware that it's a
22 compilation of videos?

23 A. I -- I don't know. I don't.

24 Q. You're not aware of whether it is or is
25 not a compilation of videos?

1 A. Correct.

2 Q. Okay. Do you know how you came to watch
3 it rather than the original videos?

4 A. I don't know.

5 Q. Okay. Are you aware that the link in 8D,
6 the following paragraph, where you said you observed
7 multiple live videos is the that is the channel
8 which is to say the collection of videos uploaded by
9 the same user that uploaded the video in
10 paragraph C?

11 A. I'm not aware of that, no.

12 Q. You're not aware of that. I'm going to
13 put a PDF in the chat. This is going to be
14 Exhibit 10.

15 (Exhibit 10 marked.)

16 Q. BY MR. ACHARYA: Tell me when you've got
17 it open, please.

18 A. Okay.

19 Q. So this is the -- this is what shows up
20 when you go to link in paragraph D.

21 Does this look familiar to you?

22 A. It does not look familiar to me, no.

23 Q. Okay. But you visited the link in
24 paragraph D, because it's in your declaration?

25 A. Yes.

1 Q. Okay. But this is the -- this is what's
2 not in the link, and it doesn't look familiar to
3 you?

4 A. This is like a home page or something.
5 It's -- you know, I am familiar with YouTube. This
6 is a home page, obviously, where there are multiple
7 videos have been posted. This does not --

8 Q. Right.

9 A. I may have visited it, but it is not --

10 Q. Do you -- Do you often go to Portland
11 Protesters Exposed?

12 A. No.

13 Q. Did you personally observe any of the
14 incidents in the videos available at that channel?

15 A. I don't know. I would have to.

16 Q. Okay. Because those are the incidents
17 that you referred to in paragraph D?

18 A. Sorry. Now I have a bunch of tabs and
19 stuff open. Sorry.

20 So in that video -- in paragraph D -- So,
21 generally, in the either in the incident command
22 post or the emergency operation center, there would
23 be people -- not people -- there'd be live stream
24 aggregators, if you know what this is. You know,
25 basically there are, you know, these channels where

1 they're kind of importing and collating multiple
2 live streams. And I observed that multiple -- when
3 it says multiple live videos of that incident in 8D,
4 on multiple live streams I observed that.

5 Q. Okay. Are you aware that the video in 8C
6 is not a live stream or a live stream aggregator?

7 A. I'm not aware of that, no.

8 Q. Okay. Paragraph 8E, you talk about MSNBC
9 reporter Sergio almost tweeting out video and
10 statements that he observed a person masquerading as
11 press to protect himself from federal officers.

12 Did you personally observe the underlying
13 incident?

14 A. I did not, but I observed the Twitter
15 post.

16 Q. You observed the Twitter post?

17 A. There's a -- Typically, there's -- I don't
18 know what you call it -- I think a social media
19 dashboard used very commonly in EOCs, incident
20 command posts, called Tweet Deck --

21 Q. Right.

22 A. -- where you search terms and it brings
23 up, I guess, collections of tweets that, you know,
24 match whatever search terms you've used.

25 Q. Sure. And the reason I'm asking you these

1 questions by the way is I think you have indicated
2 you have been on the ground sometimes at some of
3 these protests?

4 A. Yes, that's correct.

5 Q. So I just want to make sure that which
6 ones you did or did not personally observe.

7 So going on to 8F, the incident involving
8 Brandon Peep wearing a black shirt with the word
9 "press" on the front and back, running towards the
10 security fence.

11 Did you personally observe that underlying
12 incident?

13 A. Back to the -- Okay. I've got all of
14 these documents open now.

15 Q. Sure.

16 A. I don't -- I think I accidentally closed
17 out.

18 Q. I mean, I think you have this document in
19 paper in front of you, don't you?

20 A. I think I've got the other one. I've got
21 the other, of my declaration paper.

22 Q. I see.

23 A. Where?

24 Q. Here, why don't I put it back in the chat.
25 This is Exhibit 1, the second time.

1 A. I can go through the document, if I can
2 grab it. All right. We're in 8D?

3 Q. No, I'm looking at 8F now.

4 A. 8F.

5 Q. So it's a video posted by Mr. --

6 A. No, I observed this -- As I explained
7 earlier, I observed -- I saw this Twitter post; I
8 was not personally present while this video was
9 reported.

10 Q. Okay. But you're familiar with the video:
11 You watched it?

12 A. Yes.

13 Q. And it shows the man with the press shirt
14 running towards the fence?

15 A. Yes.

16 Q. So it shows him doing something illegal?

17 A. It shows him with a shield it shows him it
18 shows behavior appears to be cooperating with these
19 other people who were involved in unlawful behavior.

20 Q. So it shows him with his shield?

21 A. It appears it shows him -- He appears to
22 be cooperating with these other individuals who are
23 engaged in unlawful behavior.

24 Q. Are you aware of Brandon Peep doing
25 anything illegal himself?

1 A. Not specifically.

2 Q. Okay. Is running towards the security
3 fence illegal?

4 A. Not on its own.

5 Q. Sure. How about 8G? Did you personally
6 observe this incident where a helmet with the word
7 press written on the back was participating in the
8 destruction of government property to wit the
9 security fence around the federal facility?

10 A. I -- I witnessed this video on Twitter. I
11 was not -- I was not personally present while it
12 occurred.

13 Q. You're familiar with the video because you
14 watched it?

15 A. Yes.

16 Q. So this person was participating in the
17 destruction of government property so they were
18 doing something illegal?

19 A. It appeared to be participating in the
20 destruction of government property, yes.

21 Q. What were they doing?

22 A. Shielding the destruction of government
23 property from observation by federal officers.

24 Q. Oh, how were they shielding it?

25 A. With the use of the umbrellas and

1 surrounding it so that it couldn't be observed.

2 Q. I see. Were they cutting the fence?

3 A. Not that I can -- No.

4 Q. Could you see in the video whether they
5 were recording video or taking photos?

6 A. Could I see in the video if they were
7 recording video or taking they were posting video
8 that they appeared to be taking if that's what
9 you're asking I don't.

10 Q. No, no. I'm not asking about the person
11 who took the video. I'm asking about the person in
12 the video with the record written press on the back
13 with the helmet could you see if that person was
14 taking video or taking video in the photos?

15 A. Their hands are kind of obscured in front
16 I don't know I can't see it.

17 Q. All right. Do you know who posted the
18 video?

19 A. The -- get back to that one it's not a
20 person that I know personally but I believe it's a
21 known you know media source from.

22 Q. Right?

23 A. The Portland area.

24 Q. Mike Bivens, a freelance journalist?

25 A. Yes.

1 Q. It's good that press were there to take
2 that video; right?

3 A. Absolutely.

4 Q. Okay. And let's look at 8H real quick.

5 This is the individual wearing a helmet
6 with the word "press" written on the side, who had
7 crossed the barrier protecting the Hatfield
8 Courthouse and was calling on others to come join
9 him.

10 Did you personally observe this incident?

11 A. I observed that on video from the command
12 post.

13 Q. Okay. And do you know who made that
14 video?

15 A. There were -- We observed -- That video,
16 there were multiple live streams. He was in that.
17 He was in that area for an extended period of time.
18 So I don't know who made that particular video, but
19 there were multiple similar videos of that incident.

20 Q. So that -- that link in paragraph H goes
21 to a video posted by Andy Ngo.

22 Are you aware of that?

23 A. I am not.

24 Q. Okay. Do you watch a lot of --

25 A. I see him here, yes.

1 Q. Do you watch a lot of Andy Ngo's video?

2 A. He's a known -- I watch no more of Andy
3 Ngo's videos than I do the other journalists that
4 cover Portland protests. He's a known journalist
5 that covers Portland protests.

6 Q. Okay. Is it illegal to hop the fence?

7 A. Yes. It's trespassing.

8 Q. And it's illegal if he's wearing a gorilla
9 suit?

10 A. Say -- If he's what?

11 Q. It's illegal if he's wearing a gorilla
12 suit?

13 A. That's a hypothetical question. I don't
14 see how it relates to this.

15 Q. I'm just asking: Does the wearing of the
16 gorilla suit change that it's trespassing?

17 A. No.

18 Q. It's illegal if he's buck naked?

19 A. That's correct.

20 Q. And it's illegal if he's wearing a press
21 helmet?

22 A. That's correct.

23 Q. You'd have probable cause to believe that
24 he's committing a crime?

25 A. That's correct.

1 Q. You could arrest him?

2 A. That is correct.

3 Q. The press helmet wouldn't stop you from
4 arresting him?

5 A. That is correct.

6 Q. Was this person arrested?

7 A. I don't know the answer to that question.

8 Q. Was he charged?

9 A. I don't believe so, but I don't know the
10 answer to that question I don't know that person's
11 identity here with me.

12 Q. And just to be clear when you said that
13 you personally observed the following incidents what
14 you meant for 8B, C, D, E, F, G, and H was that you
15 personally watched the videos of those incidents?

16 A. Either videos or Twitter posts. Correct.

17 Q. Videos that other people took?

18 A. Correct.

19 Q. Videos that other people may have edited?

20 A. I'm sorry. Say the last part again.

21 Q. Videos that other people may have edited?

22 MR. GARDNER: Objection.

23 THE WITNESS: That's correct.

24 MR. GARDNER: Calls for speculation.

25 Q. BY MR. ACHARYA: Videos that other people

1 did in fact edit, at least in the case of C?

2 MR. GARDNER: Objection, lack of
3 foundation.

4 Q. BY MR. ACHARYA: You've watched the video
5 in C.

6 A. Yes. I have no way of knowing the day
7 whether the videos were edited or not. That's
8 correct.

9 Q. Okay. And it has been your testimony
10 earlier in this deposition that videos often lack
11 context leave out details and that you are
12 uncomfortable evaluating situations for legality or
13 illegality without more details?

14 A. That's correct.

15 MR. GARDNER: Objection.

16 Q. BY MR. ACHARYA: Do you see any issues
17 with using tear gas at protests during a pandemic?

18 MR. GARDNER: Objection, vague.

19 Q. BY MR. ACHARYA: Does it concern you that
20 police including federal police are using tear gas
21 at protests during a pandemic?

22 A. Again, I don't have any specific you know
23 medical information to believe that tear gas is or
24 is not you know deploying tear gas would be
25 different or not during a pandemic as opposed to